

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-02-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN  
AND  
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) No.181 OF 2007  
(Appeal ;No. 181 of 2007)

P.Senthilkumar ..... Appellant

-vs-

The Deputy Commissioner of Income Tax,  
Central Circle-II,  
Coimbatore.

... Respondent

Appeal filed under Section 260 A of Income Tax Act 1961 against the order, dated 22.09.2006, made in I.T.(SS)A. No.80/Mds/2002, for block Assessment year 1988-89 to 1898-90 on the file of Income Tax Appellate Tribunal 'D' Bench, Chennai against the order of the commissioner of Incoem - Tax (Appeals)-II, Coimbatore dated 20.2.2002 and made in ITAppeal NO. 436-C/2001-02 against the order of the Deputy Commissioner of Income-Tax, Central Circle -II Coimbatore, dated 18.4.2001 and made in PAN/GIR.No. S-711 for the Assessment Year 1988-89 to 1998

For appellant : Mr.V.S.Jayakumar

For respondent : Mr.T.Ravikumar,  
Junior Standing Counsel.

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

This appeal is filed by the assessee, against the order of the Tribunal seeking admission on the following substantial question of law:-

"Whether the Tribunal was right in law while holding that the sum of Rs.5.35 lakhs represents undisclosed income of the assessee, even though the same was covered by the declaration filed under the Voluntary Disclosure by assessee's mother?"

2. With consent of the parties, this appeal is taken up for final disposal.

3. This appeal relates to the Block Assessment Years 1988-89 and 1989-90.

4. It is stated that based on a search conducted on 03.09.1997, the assessment was completed on estimated basis. The grievance of the assessee is that the only document found at the time of search was an agreement executed by the assessee for purchase of lands at Sadumugai, Sathyamangalam, Gobichettipalayam. The consideration was for Rs.3.65 lakhs. However, the actual consideration paid was Rs.9.00 lakhs. The assessee stated that the difference in the cost of purchase was accounted in the books and were disclosed under VDIS 1997, by the respective parties. He also submitted that a sum of Rs.5.35 lakhs, being the difference in the sale price, was paid by his mother P.Santhamani, who had filed a declaration under VDIS, declaring the income and paid tax thereon; as such, there was no income assessable under the block period and, hence, a NIL return was submitted.

5. The assessing authority, however, rejected the said contention and, instead, treated the on money payment of Rs.5.35 lakhs as income of the assessee in the block assessment made under Section 143(3) read with Section 158BD. The appeal preferred before the Commissioner of Income Tax (Appeals) was dismissed and, hence, the assessee took up the matter on appeal to the Tribunal. The Tribunal, however, remanded the matter on the question of sundry creditors, on the view that the genuineness on the existence of these creditors needed verification at the level of the assessing authority. Consequently, the Tribunal set aside this issue and remanded the matter back to the file of the Assessing Officer with a direction to verify the details regarding sundry creditors following the ratio of law laid down by this Court in the case of LAKSHMI JEWELLERY v. DCIT (252 ITR 712). Aggrieved of this, the assessee has come on appeal seeking admission on the aspect of treating the sum of Rs.5.35 lakhs as an undisclosed income.

6. The Tribunal noted that the assessee had not stated in the sworn statement that at the time of search on money payment of Rs.5.35 lakhs was financed by his mother. The contention that this amount was from and out of his mother's money which was offered under VDIS declaration in 1997 was only an after thought. The Tribunal referred to a decision of the Supreme Court in the case of JAMNA PRASAD KANHAIYALAL v. CIT reported in 130 ITR 244 on a similar issue relating to the VDIS scheme and stated that in the judgment stated above, immunity is available only to the declarant and in the case on hand, the declaration was made by the assessee's mother and hence it would not prevent the Assessing Officer to include the impugned amount as undisclosed income of the assessee. Consequently, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals).

7. Learned counsel appearing for the assessee submitted that in the absence of any finding in the course of regular assessment for the assessment years 1993-94, 1994-95, 1995-96 and 1996-97 that the Trade Creditors were not genuine and the assessment of some of the Trade Creditors was considered.

8. It may be noted that the Tribunal in its order had merely directed the assessing authority to verify the accounts as regards these credits, to arrive at a finding as to whether they are to be treated as undisclosed income for the purpose of assessment of block assessment.

9. We do not find any reason to disturb the said remand by the Tribunal, since the exercise directed related to the finding of correct facts to prove the claim.

10. Learned counsel for the appellant, however, submitted that the Tribunal failed to take note of the fact that the mother had disclosed the sum of Rs.5.35 lakhs in the VDIS declaration and, hence, the assessment at the hands of the assessee was not justifiable.

11. The Tribunal considered the said submission and held that the declaration was made in December, 1997, and it is covered in the clarification given for question No.29 in the Circular No.755, dated 25.07.1999. Although it may be noted that the Tribunal had gone into this aspect and ultimately held that the amount as an undisclosed income of the assessee, considering the fact that the Tribunal had set aside the assessment, this Court directed Mr. Narayanaswamy, learned standing Counsel for the Revenue to take notice on behalf of the Revenue. After hearing both sides, in the interest of justice we are of the view that the entire assessment including the question raised before this Court shall be considered afresh by the Assessing Authority and they are directed to pass orders in accordance with law.

With this observation, the tax case stands dismissed. No costs.

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Sd/

Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASSISTANT REGISTRAR  
INCOME TAX APPELLATE TRIBUNAL III FLOOR,  
RAJAJI BHAVAN, BESANT NAGAR, CHENNAI.

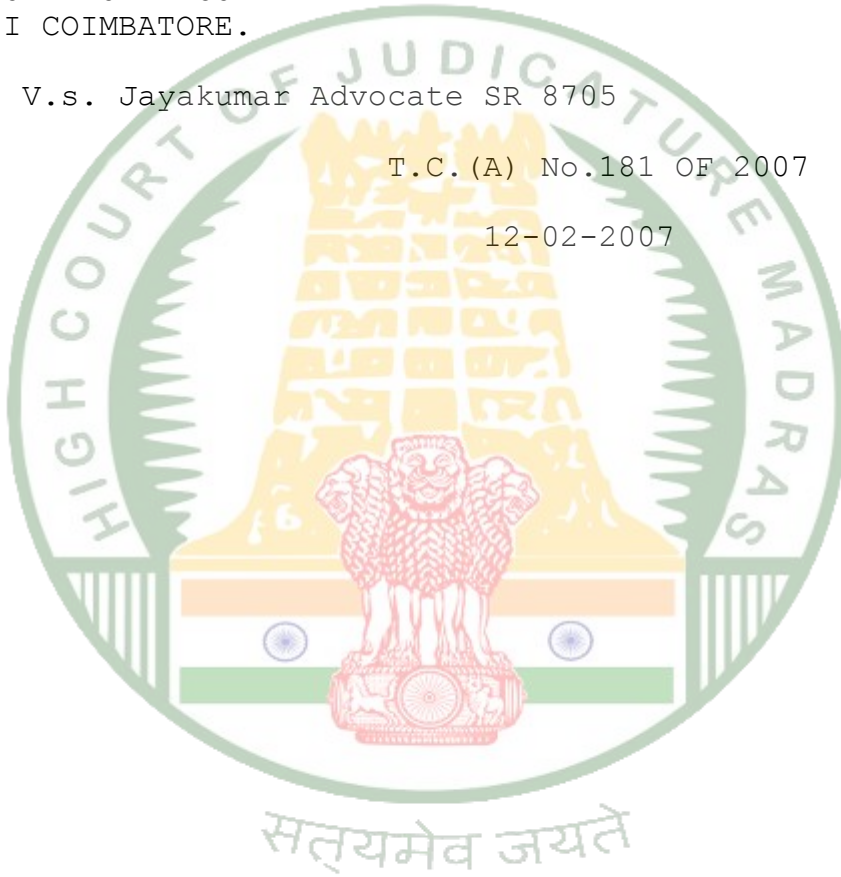
2. THE DEPUTY COMMISSIONER OF  
INCOME TAX, CENTRAL CIRCLE-II,  
COIMBATORE

3. THE COMMISSIONER OF INCOME  
TAX (APPEALS) II COIMBATORE.

+ One cc to Mr. V.s. Jayakumar Advocate SR 8705  
VC (co)  
sg 29/3/07

T.C.(A) No.181 OF 2007

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